

REMARKS

Claims 1-24 are pending in the application. The claims have been amended to place them in more conventional US patent claim format. No new matter has been added. Favorable consideration is requested.

In paragraph no. 3 on page 2 of the Detailed Action, claims 1, 3, 5-6, 8-9, 12, 14, 15, 17-20 and 22-23 stand rejected under 35 U.S.C. 102(e) as allegedly being **anticipated** by:

1. Bonsall (USP 5865766 -- referred to by the Examiner as B) in view of
2. Blum (USP 4268268 -- referred to by the Examiner as C), and further in view of
3. Pfeiffer (USP 5902253 -- referred to as P by the Examiner).

In response, applicant requests the withdrawal of this rejection because it is legally improper for an anticipation rejection to be based on multiple references. Indeed, Bonsall (the first reference) does not apply to the field of peritoneal dialysis -- which is clearly the field of the claimed invention. In this regard, the claims are all directed to “**peritoneal dialysis**” in the preamble as well as the body of the claims. Bonsal does not. Nor do Blum or Pfeiffer. As a result, there can be no anticipation.

Nor can there be any prima facie case of obviousness because the first reference does not concern peritoneal dialysis, nor do the other two references concern peritoneal dialysis. Thus, no one would or could modify the primary reference with the features of the other references in order to arrive at the claimed peritoneal dialysis invention.

For at least the foregoing reasons, the rejection should be withdrawn, i.e., it is defective and does not present a proper anticipation rejection (or a prima facie case of obviousness).

Applicant believes that the next two rejections (paragraph nos. 4 and 5 in the Detailed Action) were incorrectly copied from the last Office Action. Applicant believes that these rejections have been withdrawn by the Examiner because the Examiner has stated at the bottom of page 7 of the Detailed Action:

“Applicant’s arguments filed 10/13/09 have been fully considered [and] are persuasive.”

Moreover, the Office Action did not address the applicant’s arguments of 10/13/09 concerning the following two rejections. Thus, applicant believes that the rejections of paragraph nos. 4 and 5 have already been addressed and overcome for at least the following reasons.

In paragraph no. 4 on page 5 of the Detailed Action, claims 2, 4, 13, 16, and 21 stand rejected under 35 U.S.C. 102(e) as allegedly being anticipated by

1. B and
2. P in view of
3. Suzuki (USP 6595948 -- referred to as S by the Examiner).

In response, applicant requests the withdrawal of this rejection because an anticipation rejection cannot be based on multiple references.

In addition, neither of the first two cited references (Bonsall nor Pfeiffer) apply to the field of peritoneal dialysis – which is the field of the invention. As noted above, the claims are all directed to “peritoneal dialysis” in the preamble as well as the body of the claims. Bonsal and Pfeifer do not. As a result, there can be no anticipation.

Nor can there be any prima facie case of obviousness because the first reference and the second reference do not concern peritoneal dialysis; thus, no one would or could modify either of them to arrive at the claimed invention. Indeed, one skilled in the art of peritoneal dialysis would not and could not combine Bonsal and Pfeifer as the primary references with Suzuki in any fashion in order to arrive at the claimed peritoneal dialysis system that requires a specific peritoneal dialysis configuration. Claim 2 concerns a peritoneal dialysis system comprising an automatic peritoneal dialysis sampling system according to claim 1, a supplying line and supplying means for supplying dialysis fluid to a peritoneal cavity, a draining line, draining means for draining the fluid from said peritoneal cavity, connecting means for allowing a connection to a Y-site on the draining line which is situated between the patient peritoneum and the draining means of the peritoneal dialysis system.

For at least the foregoing reasons, the rejection should be withdrawn, i.e., it is defective and does not present a proper anticipation rejection (or a prima facie case of obviousness).

In paragraph no. 5 on page 6 of the Detailed Action, claims 7, 10 and 11 stand rejected as allegedly being obvious over B and P in view of Klein (USP 4244787). In response, applicant requests the withdrawal of this rejection because it fails to state a prima facie case of obviousness.

As noted in the foregoing paragraphs (which are applicable here because rejected dependent claims 7, 10 and 11 include all of the features of claims 1 and 2), neither Bonsall nor Pfeiffer apply to the field of peritoneal dialysis – which is the field of the invention. In this regard, independent claim 1, dependent claim 2, and the rejected dependent claims 7, 10 and 11 are directed to a specific peritoneal dialysis system. Bonsal and Pfeifer do not. Thus, one skilled

in the art of peritoneal dialysis would not combine Bonsal and Pfeifer as the primary references with Klein as the secondary reference in order to arrive at the claimed peritoneal dialysis system that requires a specific peritoneal dialysis configuration and components.

Fairly stated, the rejection does not explain how it would be reasonably apparent to combine the references and arrive at the claimed invention. This confirms that the rejection does not comply with the Supreme Court's pronouncements in *KSR*. As stated by the Supreme Court in *KSR*, there must be a "reasonably apparent" way to combine references that would yield the claimed invention. In this case, the primary references do not even relate to peritoneal dialysis and, therefore, it would not be reasonably apparent to combine these primary references with the Klein reference in any fashion to arrive at the claimed invention, which requires, among other things:

an automatic peritoneal dialysis sampling system adapted to automatically sample at specific time intervals volumic fractions of a dialysate contained in a peritoneum of a patient in order to evaluate peritoneal membrane characteristics and/or improve peritoneal dialysis for a given patient, wherein said peritoneal dialysis sampling system comprises a series of sampling containers, pumping means and a series of valves adapted to direct a certain quantity of each fluid sample to a specific sampling container,

a supplying line and supplying means for supplying dialysis fluid to a peritoneal cavity, a draining line, draining means for draining the fluid from said peritoneal cavity, connecting means for allowing a connection to a Y-site on the draining line which is situated between the patient peritoneum and the draining means of the peritoneal dialysis system, and

wherein said pumping means is of a peristaltic type.

For at least the foregoing reasons, the rejection should be withdrawn, i.e., it is defective and does not present a prima facie case of obviousness of dependent claims 7, 10 and 11.

Applicant respectfully submits that this application is in condition for allowance. A notice to that effect is earnestly solicited.

If the Examiner has any questions concerning this case, the undersigned may be contacted at 703-816-4009.

Respectfully submitted,

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